

REMARKS:

- 1) Enclosed with this Response is a literal translation of the German Priority Patent Application DE 10 2004 001 644.5 as filed on January 12, 2004, accompanied by a Translator's Declaration verifying the accuracy of the translation. Please enter this verified English translation of the German Priority Application, to complete and perfect the requirements for asserting the foreign priority date of January 12, 2004 for the present application. The foreign priority was originally claimed through the corresponding PCT International Application and re-asserted for this PCT National Phase Application. The certified copy of the priority document was submitted through the PCT processing of the application, and receipt thereof has been acknowledged by the USPTO. Thus, all requirements for the foreign priority claim and for assertion thereof are now complete.

- 2) The paragraph bridging pages 2 and 3 of the Office Action regarding the changes made to 35 USC 102(e) by the American Inventor's Protection Act (AIPA) does not appear to be applicable to the present case, because the applied reference is NOT a US Patent resulting directly or indirectly from an international application filed before November 29, 2000. Instead, the applied reference US Patent Application Publication 2006/0021728 (Gadow et al.) is a Pre-Grant Publication of US Continuation Application of a PCT International Application that was filed on November 5, 2003. Thus, the current version of 35 USC 102(e) applies. Nonetheless, regardless which version

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of 35 USC 102(e) applies, the reference is not applicable as prior art, for the following reasons.

- 3) Referring to section 8 on page 3 of the Office Action, the rejection of claims 16 to 21 as anticipated under 35 USC 102(e) by US Patent Application Publication US 2006/0021728 (Gadow et al.) is respectfully traversed.

The reference is a publication of US Application 11/186,006, which is a Continuation of the PCT International Application PCT/EP2003/012352 filed on November 5, 2003. That PCT International Application was published in German and not in English (see paragraph [0001] of the Gadow et al. Publication US 2006/0021728). Because the parent PCT International Application was not published in English but rather in German, the PCT international filing date cannot be used as a prior art date under 35 USC 102(e). The earliest prior art effective date of the Gadow et al. reference is its actual US filing date of July 20, 2005. In this regard, see MPEP 706.02(a), 706.02(f)(1) and Example 8 set forth therein. On the other hand, the present application has an effective US filing date of December 22, 2004, because it is the US National Phase of the PCT International Application PCT/DE2004/002797 (which was filed on December 22, 2004). Thus, the effective filing date of the present application is before the effective prior art date of the Gadow et al. reference, which is therefore not available as prior art under 35 USC 102(e).

Furthermore, with the enclosed English translation of the German Priority Application DE 10 2004 001 644.5, the applicant

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has hereby perfected the claim to the foreign priority of the foreign priority filing date of January 12, 2004. The Examiner will note that the disclosure text of the German Priority Application corresponds to that of the PCT International Application, and thus further corresponds to that of the application text for entering this US National Phase Application. Thus, all disclosed and claimed features of the present US application are also fully disclosed in the German priority application, so that all claims have the benefit of the earliest priority date of January 12, 2004 as an invention date, which is well before the earliest effective prior art date of the Gadow et al. reference.

For the above reasons, the Gadow et al. reference is not available as prior art, and the rejection has no remaining basis. Please withdraw the rejection.

[RESPONSE CONTINUES ON NEXT PAGE]

- 4) Favorable reconsideration and allowance of the application, including all present claims 16 to 21, are respectfully requested.

Respectfully submitted,

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Enclosures:
Transmittal Cover Sheet
Term Extension Request
Form PTO-2038
Translation of DE Priority Appl.
Translator's Declaration

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CERTIFICATE OF FAX TRANSMISSION:

I hereby certify that this correspondence with all indicated enclosures is being transmitted by telefax to (571) 273-8300 on the date indicated below, and is addressed to: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

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Name: Walter F. Fasse - Date: August 18, 2009